

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-007216

11/21/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

HUMBERTO LEYVA

DAVID J CANTELME

v.

STATE OF ARIZONA REGISTRAR OF
CONTRACTOR, et al.

MONTGOMERY LEE

MARCOS GALLEGOS
6201 W OLIVE AVE #1236
GLENDALE AZ 85302-0000
TAMMY GALLEGOS
6201 W OLIVE AVE #1236
GLENDALE AZ 85302-0000
REMAND DESK CV-CCC
REGISTRAR OF CONTRACTORS
800 W WASHINGTON
6TH FLOOR
PHOENIX AZ 85007

MINUTE ENTRY

This Court has jurisdiction over this administrative appeal from an order of the Registrar of Contractors pursuant to A.R.S. Section 12-901 et. seq.

This Court has received and considered the parties' briefs and memoranda and considered the evidence presented at the hearing on September 23, 2002.

The issue presented in this appeal is if the provisions of A.R.S. Section 32-1155 as applied to this case violate the due process clause of the 14th Amendment to the United States Constitution and Section 4 of Article II of the Arizona Constitution. Specifically, Plaintiff/Appellant, Humberto Leyva, claims that he is entitled to actual notice of proceedings before the Registrar of Contractors, and that the failure to provide him with actual notice deprived him of his right to a fair hearing before the Registrar of Contractors.

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A.R.S. Section 32-1155(A) permits registered mail as a proper method of service of citations and complaints in disciplinary proceedings. More importantly, it provides that service of the citation and complaint are complete upon “deposit in the mail.” This statute permits “presumptive service” when a citation and complaint is placed in the mailbox.

The facts of this case are clear that Humberto Leyva did not receive the December 28, 2001 citation and complaint which was mailed to him at the wrong address. Leyva testified before this court that he never received the complaint.

The rights of due process include not only the right to notice of the time and place of hearing, but also the opportunity to be present at that hearing to present evidence and otherwise defend oneself. The notice provided to Plaintiff/Appellant in this case clearly was insufficient. Further, the Registrar of Contractors and the administrative law judge erred in denying Plaintiff/Appellant’s request for rehearing.

IT IS THEREFORE ORDERED reversing the Registrar of Contractors order denying rehearing of March 12, 2002, and the order of January 24, 2002 containing the Registrar’s decision and order.

IT IS FURTHER ORDERED dissolving the stay applicable to this case and remanding this matter back to the Registrar of Contractors for a new hearing, with appropriate notice to all parties, and for such another proceedings as may be appropriate.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT